

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Clifford Tucker	Team: Team # 6	CCRB Case #: 200808945	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/23/2008	Location of Incident: § 87(2)(b) and at the PSA 5 station house	Precinct: 25	18 Mo. SOL 12/23/2009	EO SOL 12/23/2009	
Date/Time CV Reported Mon, 06/23/2008 4:09 PM	CV Reported At: Precinct	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/23/2008 4:09 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Scott Orenstein	22322	939150	HBM IRT
2. POM Andrew Fitts	27386	938484	PSA 9
3. POM Jonathan Ringel	00805	939308	PSA 5
4. POM Kenneth Brown	02217	913488	PSA 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Natasha Friday	02561	928322	PSA 5
2. SGT Jorge Encarnacion	01765	914764	PSA 5
3. POM Jose Rivera	26191	937384	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A.POM Scott Orenstein	Abuse: On June 22, 2008, officers entered § 87(2)(b) § 87(2)(b)	§ 87(2)(b)
B.POM Scott Orenstein	Force: PO Scott Orenstein used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Andrew Fitts	Force: On June 22, 2008, PO Andrew Fitts used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Jonathan Ringel	Force: On June 22, 2008, PO Jonathan Ringel used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Kenneth Brown	Discourtesy: On June 23, 2008, PO Kenneth Brown spoke rudely to § 87(2)(b)	§ 87(2)(b)
F.POM Kenneth Brown	Abuse: On June 23, 2008, PO Kenneth Brown threatened to arrest § 87(2)(b)	§ 87(2)(b)

Synopsis

Flemming § 87(2)(b) filed this complaint in person at the PSA5 Stationhouse on June 23, 2009. PO Jose Rivera called IAB who then referred the case to the CCRB under log number 08-27977 on June 23, 2008 (Encl. 4A-C). § 87(2)(b) also filed the complaint on the CCRB's Call Processing System on June 23, 2008 (Encl. 6A).

On June 22, 2008 at approximately 11:45pm in the vicinity of § 87(2)(b) in Manhattan, PO Scott Orenstein, PO Andrew Fitts, and PO Jonathan Ringel were met by § 87(2)(b) who alleged that § 87(2)(b) recently choked and threatened to kill her. She told the officers she wanted § 87(2)(b) out of her apartment. The officers followed her to her apartment. PO Orenstein knocked on the door until § 87(2)(b) opened it. There was a brief conversation before PO Orenstein entered § 87(2)(b)'s apartment (Allegation A). Then PO Orenstein allegedly grabbed § 87(2)(b) by his neck, pushed him against a wall and began to arrest him (Allegation B). PO Fitts and PO Ringel followed PO Orenstein into the apartment (subsumed in allegation A). Then PO Fitts and PO Ringel allegedly punched § 87(2)(b) (Allegations C and D). § 87(2)(b) was arrested and taken to the PSA 5 stationhouse. Following his release on June 23, 2008, he returned to the PSA 5 stationhouse at approximately 3:00pm to file a written complaint. While at the stationhouse, he commented that he would be served more quickly if he were white. PO Kenneth Brown allegedly told § 87(2)(b) to, "Sit the fuck down" and threatened to "lock his ass up" Allegations E and F).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

This case was originally assigned to PO Olufunke Awosogba and was reassigned to Investigator Clifford Tucker on July 9, 2008, following Investigator Awosogba's resignation.

Summary of Complaint

§ 87(2)(b) a § 87(2)(b) old 5'6" 220 lbs black male with brown hair, provided a complaint at the PSA5 stationhouse on June 23, 2008 (Encl. 28A-AB). Also on June 23, 2008, he provided a statement on the CCRB Call Processing System (Encl. 6A). He provided a phone statement on June 30, 2008 (Encl. 6B). He was interviewed at the CCRB on July 2, 2008 by Investigator Awosogba (Encl. 7A-E). § 87(2)(b) viewed a photo series on March 5, 2009 (Encl. 8A-X). He provided a phone statement on May 20, 2009 (Encl. 9A). His statements were not consistent.

On June 22, 2008 at approximately 8:00 p.m. he and his wife, § 87(2)(b) got into a verbal dispute that became physical when § 87(2)(b) tried to stab his arm with a pen and he held her to block her from doing so. § 87(2)(b) left the apartment shortly thereafter, at about 9:45pm. § 87(2)(b) returned about ten minutes later at which time they argued again for about another 30 minutes. Then § 87(2)(b) left the apartment again. Two minutes later, § 87(2)(b) heard banging at his door. He opened the door about a quarter of the way and saw § 87(2)(b) standing on the left side of the doorway with two white male officers and one Hispanic male officer standing behind her.

PO Orenstein, identified by investigation as PO Scott Orenstein, was the only person that spoke to § 87(2)(b) described PO Orenstein as 5'10", slim, white, male, about 28 to 30-years-old. PO Orenstein asked § 87(2)(b) to step outside twice. § 87(2)(b) declined to do so both times. Then PO Orenstein pushed § 87(2)(b)'s door open with the left side of his upper body as he grabbed § 87(2)(b)'s neck with his right hand. § 87(2)(b) did not say an officer grabbed his neck in any other statement he provided. In his phone statement on May 20, 2009 he denied that an officer grabbed his throat, confirmed

that he could breath at all times and denied that he had any injuries other than his arm which was pulled behind his back when he was being handcuffed. The officers moved two feet into § 87(2)(b)'s apartment as they all struggled.

The officers tried to put § 87(2)(b) on the floor, but could not. PO Orenstein held § 87(2)(b)'s arm against his back with the side of § 87(2)(b)'s face against the wall. Another officer pressed his hand against § 87(2)(b)'s back to keep him against the closet door. PO Orenstein pulled his right arm up while it was behind his back while another officer § 87(2)(b) could not specify which officer) tried to get his left arm behind his back. PO Orenstein told him to stop resisting and to put his hands behind his back. § 87(2)(b) denied that he was resisting. Then, § 87(2)(b) maneuvered his right arm to bring it in front of him, but while doing so he brought the officers and himself down to the floor. § 87(2)(b) said in his phone statement made on June 30, 2008 that it was at this point he began to defend himself because the officers were trying to do him harm.

§ 87(2)(b) fell to the floor on his back and the officers landed on top of him. The officers were punching him "all over." In § 87(2)(b)'s phone statement on June 30, 2008, he alleged that it was PO Orenstein and PO2, who was identified by the investigation as PO Andrew Fitts, who punched him, not PO3, identified through investigation as PO Jonathan Ringel. In his phone statement on May 20, 2009 he denied that any officers punched him and said regarding the allegation, "I ain't going to tell that lie." § 87(2)(b) described PO Fitts as a fair skinned hispanic male. He described PO Ringel as being a white male. With her arms stretched out in front of her, § 87(2)(b) tried to come in between § 87(2)(b). Within five seconds, the officers turned § 87(2)(b) onto his stomach and cuffed him.

§ 87(2)(b) told the officers that she did not want § 87(2)(b) arrested. Despite that request, PO Orenstein arrested § 87(2)(b) and he was transported to the precinct. While PO Orenstein processed § 87(2)(b)'s arrest, § 87(2)(b) took a mental note of PO Orenstein's name and shield number on PO Orenstein's shield.

The judge issued an order of protection for § 87(2)(b) against § 87(2)(b) then § 87(2)(b) was released around 2:30 p.m. on June 23, 2008. He immediately went to PSA5 to file a civilian complaint against PO Orenstein. Inside the stationhouse, he encountered Sgt. Friday, PO Rivera and Sgt. Encarnación. PO Rivera gave him a civilian complaint form to fill out. § 87(2)(b) asked for Sgt. Encarnación's name. The sergeant provided the information. § 87(2)(b) took a mental note of PO Rivera's name from his shield. § 87(2)(b) described Sgt. Friday as 5'6" to 5'7" black female with an average build and braided extensions; appeared to be 25-30 years-old. He described Sgt. Encarnacion as 5'8", dark Hispanic male with black hair and an average build; appeared to be 30 to 35-years-old and wore plainclothes. After he handed in his complaint form in, it took awhile before the officers completed processing it and he commented that he would not have to wait as long if he were a white person. A white male uniformed officer identified by investigation as PO Kenneth Brown, was standing about 30 feet away and replied to § 87(2)(b) "Sit the fuck down" before he "locks his ass up." In his statement when he viewed a photo series to identify PO Brown, § 87(2)(b) officially alleged that PO Brown told him to "sit down and wait" in a very nasty tone. He did not include any profanities nor did he include the threat of arrest. § 87(2)(b) described PO Brown as 5'8" to 5'9", white male with an gray hair slicked back and an average build; in his mid-30's to early-40's.

As § 87(2)(b) left the stationhouse he saw PO Brown sitting in the driver seat of patrol car #9294 or #9296. In his statement on the Call Processing System, § 87(2)(b) said the officer was assigned to car number 9294. § 87(2)(b) stated that he would be able to identify all of the officers that he interacted with on June 22, 2008 and June 23, 2008 if he saw photographs of them. § 87(2)(b) did not mention this portion of the complaint in his statement on the Call Processing System or in his phone statement. When § 87(2)(b) viewed a photo series on March 5, 2009 to determine the identity of PO Brown, he misidentified the potential subject officer. § 87(2)(b)'s description and car number match PO Brown, but he did not identify PO Brown in a photo series that he viewed on March 5, 2009. He did not specify when he viewed photos that this officer cursed at him or threatened to arrest him.

Results of Investigation

Civilian Witness Statement: § 87(2)(b)

§ 87(2)(b) was present at the time of the officers' entry into her apartment. § 87(2)(b) provided a written and signed statement on June 22, 2008 as part of the NYS Domestic Incident Report's Statement of Allegations/supporting deposition (Encl. 29A-D). § 87(2)(b) provided phone statements to the CCRB on August 4, 2008 and on February 24, 2009 (Encl. 10A-B, 11A). Her statements were consistent.

On the second page of the NYS Domestic Incident Report, in the section marked, "Statement of Allegations/Supporting Deposition" § 87(2)(b) wrote, "We had an argument and he started to curse and then we struggled for a minute then he choked me for about 30 sec."

On July 22, 2008 at approximately 11:45pm § 87(2)(b) was involved in an altercation with her husband, § 87(2)(b) during which § 87(2)(b) put his hands around § 87(2)(b)'s neck. She called 911, but hung up without reporting anything. Then she went outside her building and saw three police officers. She told them that she had a fight with her husband, but said that she did not want § 87(2)(b) arrested, just for him to leave. The officers followed her upstairs to her apartment. They knocked on the door and when her husband answered it they rushed inside. § 87(2)(b) observed from outside the doorway as PO Orenstein first made contact with § 87(2)(b) by putting his hand on § 87(2)(b)'s chest. PO1 (Caucasian, male, 6ft, blue shirt, possible hat) moved § 87(2)(b)'s arm high behind his back as he pushed § 87(2)(b) against a wall. When the investigator asked if any officer put his hands around § 87(2)(b)'s neck she said, "I can't recall that, no, but there was a struggle and so many hands going everywhere, I don't know if any were around his neck."

§ 87(2)(b) observed as § 87(2)(b) was put on the floor with all three officers on top of him. PO1 put his elbow into § 87(2)(b)'s back. PO1 handcuffed § 87(2)(b). She could not describe the dialogue between the officers and her husband. The officers arrested § 87(2)(b) and took him from the apartment. She could not describe the other two officers present.

Identification of Officers Interviewed

PO Orenstein's name appears as the arresting officer on § 87(2)(b)'s arrest report (Encl. 31A). The June 22, 2008 tour 3 Roll Call for PSA 5 shows that PO Orenstein was working with PO Fitts on the evening of the incident (Encl. 25A-F). Both officers testified to the CCRB that they were working with PO Ringel, who confirmed in his testimony that he was a witness to the incident. § 87(2)(b) identified PO Rivera, Sgt. Encarnacion and Sgt. Friday by physical description and their names, which he personally observed while inside PSA 5. PO Brown was identified by § 87(2)(b)'s description and by matching the officer assigned to RMP number 9294 according to the June 23, 2008 Roll Call tour 3 for PSA 5 and the PSA5 Vehicle Utilization Log for June 23, 2008 (Encl. 25A-F, 26A, 27A-E). Consequently, the aforementioned officers were interviewed at the CCRB.

Subject Officer Statement: PO Scott Orenstein

On June 23, 2008, PO Orenstein prepared the Domestic Incident Report for this incident in which he wrote that § 87(2)(b) became involved in a verbal dispute with § 87(2)(b) at which time, § 87(2)(b) squeezed § 87(2)(b) by her neck with both hands for approximately 30 seconds causing loss of air and pain (Encl. 29A-D). PO Orenstein provided the following statement to the CCRB on September 4, 2008 (Encl. 13A-B). He is 6'2", 220lbs with brown hair and brown eyes.

On June 22, 2008, PO Orenstein was assigned to a foot patrol of the § 87(2)(b) from 6:00pm to 2:35am in uniform with PO Fitts. Memo book entries, "At 11:30pm, received a call for help at § 87(2)(b). At 11:50pm, a female said, in § 87(2)(b) her husband choked her, At 11:58, the husband is in cuffs" (Encl. 12A-C).

The incident which brought PO Orenstein, PO Fitts and PO Ringel to § 87(2)(b) was a radio run at 11:30pm: 10-10 call for help. At 11:45pm, PO Paladino marked the incident as unfounded because they tracked the call to a vacant payphone which was unanswered when a police operator called back. The officers were standing near the lobby of § 87(2)(b). At about 11:50pm, § 87(2)(b) approached the officers and stated that her husband, § 87(2)(b) choked and tried to kill her. She was holding her throat and her voice was raspy, indicating that she was recently strangled. She appeared scared and in need of police assistance. PO Orenstein asked her if she needed an ambulance and she replied no, but that she needs § 87(2)(b) out of the apartment.

§ 87(2)(b) told PO Orenstein that § 87(2)(b) was home and that she had two children in the apartment at that time. PO Orenstein asked if she lives in the apartment and she replied yes and that she is married to § 87(2)(b). PO Orenstein asked § 87(2)(b) if she is sure she wants to make the report and go through with the process of the arrest because he has had experiences in which complainants do not want to have the person arrested. She confirmed that she wants to make the report that § 87(2)(b) tried to kill her and that he is near her children.

PO Orenstein knocked until § 87(2)(b) opened the door. When § 87(2)(b) opened the door PO Orenstein asked § 87(2)(b) to step outside to talk. § 87(2)(b) refused to go out into the hallway,

appeared annoyed and spoke loudly. PO Orenstein asked if § 87(2)(b) could see that § 87(2)(b) is hurt. § 87(2)(b) said that he did not mean to choke her, but he got very upset. PO Orenstein asked § 87(2)(b) “and you live here too right?” She replied yes. PO Orenstein grabbed § 87(2)(b)’s arm. § 87(2)(b) pulled his arm away at which point PO Orenstein entered the apartment approximately 2-3 feet. PO Orenstein placed § 87(2)(b) against the wall and turned him by putting his hand on § 87(2)(b)’s arm so that his chest was to the wall to place him in cuffs. § 87(2)(b) kept flailing his arms and turning around to face PO Orenstein, making the process more difficult. § 87(2)(b) did not hit PO Orenstein and PO Orenstein did not strike § 87(2)(b) at any time. PO Orenstein’s hand did not touch any other part of § 87(2)(b) than his shoulders or his wrists. He did not observe any officers punch or kick § 87(2)(b). At no point did PO Orenstein put his hands on § 87(2)(b)’s neck.

§ 87(2)(b) was standing with PO Fitts at the time. PO Ringel was also standing in the hallway near PO Fitts and PO Orenstein, but did not interact with any of the individuals. PO Orenstein did not recall § 87(2)(b) putting her hands on him at any point during the incident, but PO Orenstein did not observe whether or not she entered the apartment after him. She did not fight with PO Orenstein.

§ 87(2)(b) broke away from PO Orenstein and stepped into the hallway. PO Fitts stopped § 87(2)(b) and PO Orenstein grabbed § 87(2)(b) from behind. § 87(2)(b) was not fighting, but he was making it difficult for the officers to put him in handcuffs by moving his arms. PO Orenstein was behind § 87(2)(b) when § 87(2)(b), PO Orenstein, and PO Fitts fell on the floor in the apartment and hallway. PO Orenstein was attempting to handcuff § 87(2)(b) at the time of the fall when either PO Orenstein or § 87(2)(b) tripped. Once PO Orenstein was able to handcuff § 87(2)(b) the officers promptly picked up § 87(2)(b) to stand him on his feet. About seven other police officers who PO Orenstein could not identify arrived. PO Orenstein left § 87(2)(b) in their custody as he stepped away to call Sgt. Richard Gonzales.

At this point, § 87(2)(b) stated that she did not want § 87(2)(b) arrested. § 87(2)(b) was asking her, “How could you do this to me? How could you have me arrested?” PO Orenstein said that she may have felt bad for him so she started changing her story. PO Orenstein called Sgt. Gonzales on the phone, but confirmed that § 87(2)(b) would be arrested and that if § 87(2)(b) did not wish to press charges it would be dealt with in court. § 87(2)(b) did not request any medical attention and no medical attention was provided for him. PO Orenstein was the arresting officer. PO Orenstein transported § 87(2)(b) to the Precinct in an RMP van and arrived to the Precinct with § 87(2)(b) at 12:10am June 23, 2008.

Subject Officer Statement: PO Andrew Fitts

PO Fitts was interviewed at the CCRB on September 18, 2008. He is a § 87(2)(b) old white male with brown hair (Encl. 15A-B).

PO Fitts’ statement was consistent with that of PO Orenstein with respect to how they received this job, the information § 87(2)(b) provided and the interaction with § 87(2)(b) at the apartment (Encl. 14A-C). He did not clarify whether any officers punched § 87(2)(b) and stated that PO Orenstein remained near the apartment as PO Fitts and PO Ringel escorted § 87(2)(b) downstairs to be taken the precinct. Once inside the elevator, § 87(2)(b) slammed the right side of his head against the wall. PO Fitts asked if § 87(2)(b) was alright, if he felt out of breath or dizzy and if he needed medical attention. § 87(2)(b) said no. At no point did § 87(2)(b) ask for medical attention.

Subject Officer Statement: PO Jonathan Ringel

PO Ringel provided the following statement to the CCRB on September 22, 2008. He is a white male, 5’5”, 150lbs with red hair and blue eyes (Encl. 19A-B).

PO Ringel’s statement was consistent with that of PO Fitts and PO Orenstein with respect to how they received this job, the information § 87(2)(b) provided and the interaction with § 87(2)(b) at the apartment (Encl. 18A-C). He also did not clarify if § 87(2)(b) was punched. He was also present for the occurrence in the elevator in which § 87(2)(b) slammed his head against the wall. PO Ringel saw no injuries on § 87(2)(b) and he did not hear § 87(2)(b) complain of injuries.

Subject Officer Statement: PO Kenneth Brown

PO Brown provided the following statement at the CCRB on March 18, 2008. He is 6'1", 210lbs, with long blond hair cut back behind his ears and green eyes (Encl. 17A-B).

On June 23, 2008, PO Brown worked from 3:00pm to 11:35pm. He was assigned to be the sergeant's operator for Sgt. Rodriguez in RMP 9242. He was in uniform. He had no entries in his memo book regarding this incident (Encl. 16A-B).

PO Brown did not recall this incident. He did not recognize § 87(2)(b) by his driver's license photo. PO Brown said that at 3:10pm, he is usually at roll call. Civilians who want to file complaints enter the building from 123rd Street. Roll call is conducted on the opposite end of the room from where a civilian would enter. PO Brown had no interactions with civilians between roll call and leaving to go with the sergeant on patrol. PO Brown did not recall anyone saying that they want to file a complaint. He did not recall anyone saying that if they were white they would receive better treatment.

PO Brown said that he has had the same hairstyle since 1989, therefore, long blond hair, cut back behind his ears. He said he never had his hair slicked back. PO Brown said that he interacts regularly with PO Rivera, Sgt. Encarnacion and Sgt. Friday, but did not recall those individuals speaking about someone complaining. Nothing that day stood out in PO Brown's mind. He denied that he stated, "Shut up and sit the fuck down." He denied that he ever threatened to "lock his ass up."

Witness Officer Statement: Sgt. Jorge Encarnacion

Sgt. Encarnacion provided the following statement to the CCRB on October 9, 2008. He is Hispanic, male, 6'1", 195lbs with black hair and brown eyes (Encl. 20A-B).

Sgt. Encarnacion worked from 6:55am to 2:52pm. He was assigned as a desk officer. He was not working with anyone and was dressed in uniform. He had no memo book entries regarding this incident. He was not responsible for the command log at the alleged time of the incident.

Sgt. Encarnacion did not know for what incident he was being interviewed. Sgt. Encarnacion was off duty at 14:50, but was present at the PSA 5 stationhouse at the time of the incident. He did not recognize a picture of Flemming § 87(2)(b) when shown § 87(2)(b)'s driver's license. Sgt. Encarnacion testified that he did not have any interaction with Sgt. Friday and § 87(2)(b) at the same time. He did not recall any officers speaking discourteously to any individual at PSA 5. He did not recall hearing any officers telling § 87(2)(b) to "shut up" and "sit the fuck down" or "sit the fuck down before I lock your ass up."

Witness Officer Statement: PO Jose Rivera

PO Rivera provided the following statement to the CCRB on October 9, 2008. PO Rivera is Hispanic, male, 5'9" 170lbs with black hair and brown eyes (Encl. 22A-B).

PO Rivera was dressed in uniform and working alone as the switchboard operator (TS) on the date and time of the incident. He had no memo book entries regarding the incident (Encl. 21A-C). He did not recall handing a man a complaint form. He did not recognize § 87(2)(b) by his driver's license photo. He did not recall which officers were present at the time. At the time of the incident it was probably not that busy. He was near Sgt. Friday at the time of the incident. He did not recall hearing any officers tell a civilian to "shut up" or "sit the fuck down or I'll lock your ass up."

Witness Officer Statement: Sgt. Natasha Friday

Sgt. Friday provided a statement at the CCRB on October 24, 2009. She is a 38 year old black female, 5'9" 190lbs with brown hair and brown eyes. Sgt. Natasha Friday did not recall the hours she worked on the date of the incident: June 23, 2008. She was identified as the desk Sergeant. She did not recall her assignment. She wrote an entry in the Command Log at 15:10 on June 23, 2008 that § 87(2)(b) came to the stationhouse to file a complaint against PO Orenstein (Encl. 28S). He was given the necessary paperwork to do so then he left the stationhouse at 3:30pm.

Sgt. Friday did not recall interacting with § 87(2)(b) and did not recognize him in a picture. She did not hear an officer tell § 87(2)(b) to "Sit the fuck down" or "Shut up or I'll lock your ass up."

Police Documents

The Sprint Print-Out for this incident shows that officers from PSA 5 arrived to § 87(2)(b) at 11:48pm (Encl. 24A). They made an arrest at 1:05am and marked the job as a Family Offense arrest at 7:38am. § 87(2)(b)'s arrest report, § 87(2)(b) shows that § 87(2)(b) was arrested by PO

Subject officer CCRB History

PO Orenstein has worked for the NYPD for three years and no CCRB allegations have been substantiated against him. PO Fitts has worked for the NYPD for three years and no CCRB allegations have been substantiated against him. PO Ringel has worked for the NYPD for three years and had no CCRB allegations have been substantiated against him. PO Brown has worked for the NYPD for 19 years and no CCRB allegations have been substantiated against him (Encl. 2A-E).

Conclusions and Recommendations

Officer Identification

All three officers made a collective decision to enter the apartment. Consequently, allegation A is being pleaded against “Officers” from PSA 5. PO Orenstein used force in grabbing § 87(2)(b) and pushing him against a wall to affect the arrest. Therefore allegation B is being pleaded against PO Orenstein. § 87(2)(b) did not provide an accurate physical description for PO Ringel or PO Fitts; however, he alleged that both of the remaining officers entered his apartment and wrestled with him on the floor. Therefore, allegations C and D are being pleaded against PO Fitts and PO Ringel respectively. Finally, allegations E and F are being pleaded against PO Brown because he was identified by § 87(2)(b) s accurate physical description and as the driver in RMP number 9294. Although § 87(2)(b) also provided the RMP number 9296, the officers assigned to that car do not match § 87(2)(b) s description of the subject officer: Sgt. Gordon Pekusic is shaved completely bald and PO Yokasta Goris is a Hispanic female. On March 5, 2009, approximately nine months after the incident, § 87(2)(b) viewed a photo series of subject officers, one of which was PO Brown. Despite § 87(2)(b) s misidentification of the subject officer, the officer he chose has similar hair color, eye color, and age to PO Brown, but was in no way involved with this incident.

Undisputed Facts

On June 22, 2008 in the vicinity of § 87(2)(b) in Manhattan, § 87(2)(b) and § 87(2)(b) had a physical altercation. § 87(2)(b) told PO Orenstein, PO Fitts and PO Ringel that § 87(2)(b) choked her and she wanted § 87(2)(b) out of the apartment. PO Orenstein, PO Fitts and PO Ringel entered the § 87(2)(b) residence. PO Orenstein and PO Fitts detained § 87(2)(b). During the arrest § 87(2)(b) moved his arms. It is also undisputed that force was used to arrest § 87(2)(b). On June 23, 2008, § 87(2)(b) went to PSA 5 and filed a written complaint about the incident.

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(b) alleged in his first official statement at the CCRB that PO Orenstein grabbed his throat. He did not make this allegation in any other statement. In his phone statement on May 20, 2009 he denied that PO Orenstein ever grabbed his throat, denied that he had any injuries on his body other than pain in his shoulder which allegedly was a result of being held then moving before PO Orenstein handcuffed him. He also denied that he ever sought medical treatment for that injury. Furthermore, all the officers and § 87(2)(b) denied that PO Orenstein ever grabbed § 87(2)(b) by the neck. Consequently, a chokehold allegation is not pleaded against PO Orenstein.

Allegation A) Officers entered § 87(2)(b) § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) The Exigent Circumstances doctrine in the 2008 edition of Barry Kamins' *New York Search and Seizure* shows that an officer is permitted to affect a warrantless entry to affect an arrest in such a situation. Additionally, the Emergency Doctrine cited in Kamins' volume shows an officer is authorized to enter premises without a warrant to assist victims of crimes that have just occurred (Encl. 1A-C). § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation B) PO Scott Orenstein used physical force against § 87(2)(b)

Allegation C) PO Andrew Fitts used physical force against § 87(2)(b)

Allegation D) PO Jonathan Ringel used physical force against § 87(2)(b)

It is undisputed that officers used physical force to arrest § 87(2)(b) § 87(2)(g)

§ 87(2)(b) It was further shown that no officers punched § 87(2)(b)

§ 87(2)(b) and he suffered no injuries, § 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)

Allegation E) PO Kenneth Brown spoke rudely to § 87(2)(b)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g).

Allegation F) PO Kenneth Brown threatened to arrest § 87(2)(b)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g).

Investigator: Date:

Supervisor: Date:

Reviewed by: Date:

Reviewed by: Date: